

KENTUCKY DEPARTMENT OF EDUCATION

STAFF NOTE

Action/Discussion Item:

702 KAR 6:100, Appeal Procedures for Sponsors of Child Nutrition Programs (Final)

Applicable Statute or Regulation:

7 CFR 210.8(b)(1); 215.10(b); 220.11(b); 225.9(d)(6); and 226.10(e); 702 KAR 6:100

Action Question:

Should the Kentucky Board of Education give final approval to 702 KAR 6:100, Appeal Procedures for Sponsors of Child Nutrition Programs?

History/Background:

Existing Policy. Pursuant to several federal regulations, the Kentucky Board of Education has promulgated 702 KAR 6:100, setting forth the procedures under which sponsors of the various child nutrition programs administered by the Division of Nutrition and Health Services may appeal adverse actions by the Division. One of the items that may be appealed is denial of all or part of a claim for reimbursement, except for a late claim. 7 CFR 210.8(b)(1); 215.10(b); 220.11(b); 225.9(d)(6); and 226.10(e) all stipulate that monthly claims for reimbursement must be filed within 60 days of the close of the month for which reimbursement is being claimed. However, each of those regulations also allows state agencies to establish shorter timeframes within which claims must be submitted. In October of 1996, the Kentucky Department of Education (KDE) exercised that discretion and notified program sponsors that they would henceforth have only 30 days from the close of the month to submit the claim. This change enabled KDE to get funds to sponsors in a speedier fashion and allowed for quicker reporting to the U.S. Department of Agriculture.

Policy Issue(s):

KDE had a recent situation where a Child and Adult Care Food Program sponsor submitted its second late claim within three (3) years. Accordingly, KDE denied payment of the claim. The sponsor requested that the U. S. Department of Agriculture pass judgment on the denial. To paraphrase, the U.S. Department of Agriculture indicated that if the sponsor submits the claim 31-60 days late, KDE may deny payment but must offer appeal rights to the sponsor. If the claim is 61 days late, KDE may deny payment without offering appeal rights. In short, the discretion to establish a shorter timeframe does not affect appeal rights.

That being the case, KDE sees no reason for the regulation to deny appeal rights for sponsors whose claim for reimbursement is denied because the claim was late. That is the substantive change proposed in Section 1(2)(g) and Section 1(3)(c).

In addition, where it is mentioned, the amendment would update the division's name.

Specific changes to the regulation include:

Page 1, line 5 - after the word “for,” add “nutrition and health services” and delete the words “school and community nutrition”;

Page 2, line 10 - after the word “reimbursement,” delete the words “except for a late claim”;

Page 3, lines 2 and 3 - after “reimbursement,” delete the words “except for a late claim under 7 CFR 225.9(d)(5)”;

Page 3, lines 12 and 13 - after the word “of” on line 12, add the words “Nutrition and Health Services” and delete the words “School and Community Nutrition”;

Page 3, line 15, after the word “of” on line 14, add the words “Nutrition and Health Services” and delete the words “School and Community Nutrition”;

Page 5, line 4 – after the word “the” on line 4, add the word “division” and delete the words “Division of School and Community Nutrition”.

Staff Recommendation and Rationale:

Staff recommends final approval of 702 KAR 6:100 to provide consistency between the regulatory requirements and the response of the U.S. Department of Agriculture, and to implement the remaining changes that are technical in nature.

Groups Consulted and Brief Summary of Responses:

Local Superintendents’ Advisory Council (LSAC)

LSAC will provide the Board with a letter prior to the August meeting citing their input.

Impact on Getting to Proficiency:

Good child nutrition is essential for the maximization of learning.

Contact Person:

Paul McElwain, Director
Nutrition and Health Services
502-564-5625
Paul.McElwain@education.ky.gov

Deputy Commissioner

Commissioner of Education

Date:

August 2006